

The Hon. Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KIMBERLEY J. DAVIS,

Plaintiff,

v.

PORT ANGELES SCHOOL DISTRICT,  
AMITY BUTLER, and her marital community,  
PATRICIA REIFENSTAHL, and her marital  
community,

Defendants.

No. 3:20-cv-05448-BHS-SKV

MOTION TO MODIFY CAPTION AND  
CASE SCHEDULE

**I. RELIEF REQUESTED**

Defendant Port Angeles School District moves to amend the case caption pursuant to the court's dismissal of all claims against the individual defendants Amity Butler and Patricia Reifensahl. Doc. 69.

Port Angeles School District further moves, pursuant to Fed. R. Civ. Proc. 16 (4), to modify the Order Setting Jury Trial and Pretrial Dates (Doc. 69) by adding a deadline of 60 days after an order granting this motion for the completion of discovery as to new information. This motion is brought to allow the defendant to conduct additional discovery related to the plaintiff's discovery responses received after the discovery deadline and to depose her expert witness with respect to the plaintiff's alleged economic damages as stated in the expert's preliminary report submitted after the discovery deadline.

## II. FACTS AND PROCEDURAL HISTORY

Kimberley Davis (“Davis”) filed this lawsuit against the Port Angeles School District (“the District”) and two individuals, Amity Davis and Patricia Reifensahl, on May 12, 2020. The District had notified Davis, then an employee of the District, that it had found probable cause for discharge. Following entry of a joint status report, the Court entered an Order Setting Pretrial Schedule on July 30, 2020. Doc. 15. This order required disclosure of expert testimony by February 2, 2021.

On September 10, 2020, Defendants issued a discovery request to the Plaintiff requesting, among other things, the factual basis for Plaintiff’s allegation that a District employee may be obstructing the Plaintiff’s ability to find a job. Declaration of Clifthorne. On February 9, 2021, Plaintiff produced documentation related to her job applications in response to Interrogatory 12 and Request for Production 13.

On February 21, 2021, Plaintiff produced a “preliminary” report by Christina D. Tapia, PhD, as to economic damages. Plaintiff subsequently produced a second “preliminary” report by Dr. Tapia on April 27, 2021. No final report has been produced. This second preliminary report was produced after the existing discovery cutoff of April 23, 2021. Doc. 15.

Plaintiff and Defendants filed cross-motions for summary judgment on all claims on May 24, 2021. Doc. 28, 35. Magistrate S. Kate Vaughn entered a Report and Recommendation on the summary judgment motions. Doc. 60. Both parties raised objections, and on March 1, 2022, this Court adopted the recommendations of the Magistrate. Doc. 69.

In its summary judgment ruling, the Court held that the refusal to provide Plaintiff with job references does not qualify as an adverse employment action because Plaintiff produced no evidence that a refusal to provide references deviated from the District’s standard practices. Doc. 60, p. 39. In addition, the Court dismissed Plaintiff’s claim that her termination and the District’s referral to the Office of Professional Practice were retaliatory. Id., pp. 40-42. The sole claim remaining for trial is

1 Plaintiff's claim that the District provided negative job references for which discrimination was a  
 2 "but for" or "substantial cause." Id., p. 42-43.

3 After the discovery cutoff of April 23, 2021, Plaintiff supplemented her response to Request  
 4 for Production 12 with numerous applications for employment, and responses. The supplemental  
 5 application records extend through November 3, 2021, and the records of response extend through  
 6 November 18, 2021. The majority of Plaintiff's supplemental discovery response also post-date the  
 7 most recent preliminary report submitted by the Plaintiff's expert witness.

8 Trial is currently set for November 15, 2022. Doc. 69.

9 The District requests that the discovery period be extended for 60 days from entry of an order  
 10 granting this motion, for the purpose of allowing the District to identify the claims and damages that  
 11 Plaintiff intends to assert at trial, to prepare its rebuttal of such claim, and to depose Dr. Tapia  
 12 regarding her second preliminary report.  
 13

### 14 **III. LEGAL AUTHORITY**

#### 15 **1. Amendment of Caption is Appropriate**

16 Fed. R. Civ. Proc. 10 requires that a caption identify all of the parties. The individual  
 17 defendants have been dismissed, and the dismissal is not the subject of an appeal. Accordingly, it is  
 18 appropriate to amend the caption.

#### 19 **2. Extension of Discovery is Appropriate**

20 Pursuant to FRCP 26(a)(2), the disclosure of an expert witness must be accompanied by a  
 21 written report containing, among other things, (i) a complete statement of all opinions the witness  
 22 will express and the basis and reasons for them and (ii) the facts or data considered by the witness in  
 23 forming them. Absent a stipulation or court order, this disclosure and report must be made at least  
 24 90 days before the date set for trial. FRCP 26(a)  
 25  
 26

1 Trial in this matter has been set for November 15, 2022, so the final report of the Plaintiff's  
 2 expert witness would be due, in absence of a court order to the contrary, by August 17, 2022. FRCP  
 3 26(a)(2)(D)(i).

4 To prepare for trial, Defendants need to ascertain the amount and nature of the Plaintiff's  
 5 economic damages claim. This includes deposing any witness identified in the Plaintiff's discovery  
 6 response related to a job application by Plaintiff, and deposing Plaintiff's expert witness, Dr. Tapia.

7  
 8 Allowing a 60-day discovery period limited to Plaintiff's economic damages related to her  
 9 remaining claim is appropriate because the Court's March 1, 2022 Order significantly narrowed the  
 10 issues for trial. Plaintiff will have the burden of proving that she took a statutorily protected action  
 11 which was either the cause of an adverse employment action by the District (under federal law) or a  
 12 substantial factor in causing such adverse action (under Washington state law). *See Porter v.*  
 13 *California Dep't of Corr.*, 419 F.3d 885, 894 (9th Cir. 2005). If Plaintiff establishes a prima facie  
 14 case, the District must articulate a legitimate, nondiscriminatory reason for the action taken. *Vasquez*  
 15 *v. Cty. of L.A.*, 349 F.3d 634, 640 (9th Cir. 2003), as amended Jan. 2, 2004. In addition, if Plaintiff  
 16 prevails on her claim, Defendant will also have the burden of establishing whether Plaintiff failed to  
 17 mitigate her damages.

18  
 19 The evidence sought from the additional discovery period is thus critical to the Defendant's  
 20 preparation of its case. It is appropriate to allow discovery related to information produced by the  
 21 Plaintiff following the discovery cutoff. Moreover, extending the discovery period for this limited  
 22 purpose for 60 days after entry of an order so providing will not prejudice the Plaintiff, because trial  
 23 is set for seven months after the filing of this motion so the expert witness' testimony will be obtained  
 24 well in advance of the 90-day period before trial set by the court rules. FRCP 26(a)(2)(D)(i).

1 For the reasons stated herein, the District respectfully asks that the Order Setting Jury Trial  
2 and Pretrial Dates be amended to include a deadline of July 15, 2022, for the completion of discovery.

3 DATED this 15<sup>th</sup> day of April, 2022.

4  
5 VANDEBERG JOHNSON & GANDARA, PS

6  
7 By: /s/Heidi M. Maynard

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**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO  
MODIFY CAPTION AND CASE  
SCHEDULE**

THIS MATTER came on before the above-entitled Court upon Defendant Port Angeles School District's Motion to Modify Caption and Case Schedule; the Court having read the pleadings filed and having reviewed the records and files herein; now, therefore, the Court

ORDERS that the Defendants' Motion to Modify Caption and Case Schedule is hereby granted. The new discovery cutoff is \_\_\_\_\_.

DATED: \_\_\_\_\_, 2022.

\_\_\_\_\_  
Hon. Benjamin H. Settle  
United States District Judge

1 Presented by:

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